THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 25360 of 1996

Dated 12-09-2005

Between:

P.Ravi Kishore.

..... PETITIONER

AND

National Textile Corp., (APKK & M) Ltd., and others.

.....RESPONDENTS

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ORDER:

The order of termination dated 13-11-1996, issued by the first respondent, is impugned in this writ petition.

The facts, to the extent necessary for this writ petition, are that the petitioner was called for an interview on 08-081994, vide letter dated 04-08-1994, asking him to bring his original caste certificate, educational qualification certificates, etc., along with two sets of Photostat copies. As per the instructions given in the said letter dated 04-08-1994, the petitioner attended the interview along with the original certificates. The second respondent, vide letter dated 17-08-1994, informed the petitioner about the offer of appointment and that, if the petitioner was willing to accept the terms and conditions of the offer of appointment, he was required to sign the duplicate copy and return the same to the Divisional Office. The petitioner was required to get himself examined at the Government Hospital, Vijayawada, for his fitness for employment, pursuant to which, the petitioner appeared before the Medical Officer, Government Medical Hospital, Vijayawada, and thereafter joined duty on 20-08-1994 (F.N.). The petitioner was issued termination order, dated 13-11-1996, inviting his attention to clause 2.5 of the appointment order. The order of termination reads thus:

"Your attention is invited to clause 2.5 of the appointment

> order issued to you. As we have received an adverse report of your character and antecedents from the District Magistrate and you are also absenting yourself from duties which is against the rules and regulations of the Corporation, your services are hereby terminated with immediate effect."

Clause 2.5 of the appointment order reads thus:

> "Your furnishing of particulars in the enclosed attestation form and bio-data form. Your employment shall be subject to verification of Character and Antecedents. If any, adverse report is revealed, your services shall be terminated summarily without assigning any reason therefor."

Sri B.D.Raju, learned counsel for the petitioner, would submit that the petitioner's services with the respondent corporation, could not have been terminated without putting him on notice and without any enquiry being caused in this regard. Learned counsel would submit that it is not a case of suppression of fact, inasmuch as the information furnished by the petitioner is genuine. Learned counsel would submit that though the petitioner was involved in three criminal cases (C.C.No.177 of 1993, S.C.No.382 of 1993 and S.C.No.420 of 1994), he was acquitted in C.C.No.177 of 1993 on 06-05-1994 and S.C.No.382 of 1993 on 24-06-1994, whereas the summons in S.C.No.420 of 1994 was issued only in the year 1995 and since there was no conviction on the date, on which the petitioner submitted his explanation, it could not be said that the petitioner had suppressed information warranting termination of his services, in accordance with clause 2.5 of the appointment order. Learned counsel would further submit that, under the standing orders of the respondent Corporation, the period of probation was only one year and inasmuch as the petitioner's services was continued thereafter, without any specific order of extension of probation being passed, it is deemed that the petitioner's probation has been confirmed and since the petitioner is deemed to be a regular employee, it is not open for the respondents to terminate his services simplicitor without a domestic enquiry being conducted into the acts of mis-conduct,

in accordance with the standing orders, rules and regulations of the Corporation. Learned counsel would further submit that the rowdy sheet of the petitioner was closed in the year 1992 itself, and as such, it cannot be said that the petitioner's antecedents disentitled him from seeking employment in the respondent Corporation. Learned counsel for the petitioner would rely on the judgments of the Supreme Court in **REGIONAL MANAGER, BANK OF BARODA** v. **PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL** and **JAGDISH PARSAD** v. **SACHIN ZILA GANNA COMMITTEE, MUZAFFARNAGAR**.

Ms.P.Nageswara Sree, learned counsel for the respondent Corporation, would refer to the averments in the counter affidavit and submit that in the application submitted by the petitioner, he had enclosed a bio-data form, wherein clause-26 reads thus:

> "Have you ever been arrested or summoned by Courts as a defendant in a Criminal Court or convicted, fined or imprisoned for violation of any law (exclude minor traffic violation) or any case pending or have been barred/disqualified by P.S.C./U.P.S.C. for appearing in its examination or rusticated by any University or any educational authority?"

Learned counsel would submit that the Corporation caused verification of the antecedents by addressing a letter to the District Collector, Guntur, on 26-04-1996, to verify the antecedents of the petitioner and that the District Collector had, vide report, dated 29-07-1996, informed the respondent Corporation that the petitioner was a rowdy-sheeter and that his antecedents were bad. Pursuant to the report of the District Collector, the petitioner's services is said to have been terminated vide proceedings dated 13-11-1996.

Learned counsel for the respondent Corporation would submit that the appointment of the petitioner was subject to verification, and as such, continuance of his services was subject to verification of antecedents, and could not be said to be a punishment imposed or an order which casts a stigma on the petitioner.

Insofar as the contention that the petitioner's probation has not been extended beyond the period of one year, resulting in his services being deemed to have been confirmed, no such plea has been taken in the affidavit filed in support of the writ petition and in the absence of any plea in this regard, this question does not call for examination.

Learned counsel Sri B.D.Raju, however, submits that since the counter affidavit was filed just two weeks ago, the petitioner ought to have been given an opportunity of filing a reply affidavit thereto. I am afraid, I cannot agree with this submission. The writ petition was filed in the year 1996 and this plea ought to have been taken therein. After a lapse of nine years, the petitioner cannot now be permitted to raise this plea by way of a reply affidavit. This contention is, therefore, rejected.

The other contention that the petitioner had not suppressed the fact of his conviction is also to be rejected, inasmuch as clause 26 of the Bio-data form requires the applicant to specifically state as to whether he had ever been arrested or summoned by courts as a defendant in connection with criminal cases. It is not in dispute that in connection with C.C.No.177 of 1993 and S.C.No.382 of 1993, the petitioner was arrested and was a defendant in the said criminal cases. His reply in the negative in the application form would undoubtedly amount to suppression of fact. Clause 2.5 of the order of appointment clearly states that the petitioner's employment shall be subject to verification of character and antecedents and, if any, adverse report is

revealed, the petitioner's services would be terminated without assigning any reasons. The respondents, therefore, are justified in invoking clause 2.5 to terminate the services of the petitioner, consequent upon verification of his character and antecedents. It is also clear that the petitioner had, indeed, suppressed the fact with regards his arrest and his being summoned to courts as a defendant in the criminal cases earlier. Clause 26 of the Bio-data form does not relate merely to conviction but also as to whether he had ever been arrested or summoned by the courts as a defendant in a criminal case. Irrespective of whether the petitioner had been convicted or otherwise, the fact remains that he had furnished false information under clause-26 regarding his arrest and his being a defendant in the criminal cases, which fact came to light on receipt of the report of the District Collector, pursuant to a request made by the respondent corporation for verification of the antecedents of the petitioner. The judgment of the Supreme Court in **BANK OF BARODA's** case (1 supra), referred to by the learned counsel for the petitioner, was also a case where the employee had failed to furnish information regarding his being prosecuted earlier. In **BANK OF BARODA's** case (1 supra), the employee was issued a show cause notice for making a false representation, to which, the employee submitted his reply informing that on the date of his application to the post of Cash Collector, prosecution proceedings against him had not been initiated, and as such, he had not suppressed any fact. Consequent upon his termination, the employee raised a dispute before the Industrial Tribunal, Kanpur. In the meanwhile, the employee had approached the Allahabad High Court against his conviction, which was allowed by Allahabad High Court. The Industrial Tribunal, Kanpur, while holding that the employee had concealed material facts, took the view that giving of false statement, in the facts of the case, should not be deemed to be such a grave misconduct which may visit him with extreme punishment of termination from services. The Hon'ble Supreme Court held that the peculiar facts of the case did not require its interference under Article 136 of the Constitution of India, more so, in view

of the order of the labour court in this regard. The Apex Court also took note of the fact that in the show cause notice dated 26-02-1980, the employee was put on notice that not only the criminal proceedings were pending on the date of application, but ultimately ended in conviction. The appellant itself had thought it fit to await the decision in the criminal case before taking any precipitative action against the employee for his mis-conduct. In such factual matrix, the Supreme Court held that suppression was not so grave as to require the appellant to remove the employee from service. The said judgment, has no application, to the facts of the present case. It is not in dispute that the petitioner has, in his application, or in the bio-data submitted along with his application form, chosen to reply in the negative to the query as to whether he had ever been arrested or summoned by the courts as a defendant in criminal cases and had thereby suppressed the fact of his having been so arrested and summoned by the courts in C.C.No.177 of 1993 and S.C.No.382 of 1993, even if it were to be accepted the contention that in S.C.No.420 of 1994 summons had been issued to him only after he had submitted his application. The judgment of the Supreme Court in **BANK OF BARODA's** case (1 supra), has no application to the facts of the present case.

I n **JAGDISH PARSAD's** case (2 supra) the question which arose for consideration was whether the order of termination of services was an innocuous order of termination simplicitor or whether it casts any stigma or aspersion on the service career of the employee, thereby prejudicially affecting his service career. The Supreme Court took note of the Regulations, which require an enquiry to be conducted for imposition of punishment and held:

> "Shri Jagdish Parsad, Clerk, Co-operative Cane Development Society Limited, Muzaffarnagar while working in Roadways was caught in corruption on 6-6-67 and his services were terminated from there. Shri Jagdish Parsad obtained his appointment in service in

the Society, by concealing the above facts. On receiving a complaint this fact was verified from the Roadways Department, In this way Shri Jagdish Parsad, having been removed on charge of corruption is not suitable for employment in this Society.

Therefore, the services of Shri Jagdish Parsad, Clerk, Cane Society, Muzaffarnagar are terminated with immediate effect."

"……. This order of termination is not an innocuous order, but is an order which on the face of it casts stigma on the service career of the appellant and it is in effect an order of termination on the charges of concealment of the facts that he was removed from his earlier service under the U. P. Roadways on charges of corruption. This order undoubtedly is penal in nature having civil consequences and it also prejudicially affects his service career. Furthermore this order of termination if considered along with the show cause notice will clearly reveal that the order of termination if considered along with the show cause notice will clearly reveal that the order of termination in question is not an innocuous order made for doing away with the service of the temporary employee like the petitioner-appellant in accordance with the terms and conditions of his service. This order is, therefore, per se, illegal, arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U. P. Cane Co-operative Service Regulations 1975. The order made is also in utter violation of the principles of audi alteram partem."

There is substantial force in the submission of the learned counsel for the petitioner that the order of termination, in the present case, is not an innocuous order. The order passed in the present case, as extracted supra, is similar to the order passed in **JAGDISH PARSAD's** case (2 supra). It was, therefore, necessary for the respondents to put the petitioner on notice and initiate disciplinary action for concealing/suppressing information in his application form. Even, if it were to be held that the respondents were entitled, under clause 2.5 of the order of

appointment, to terminate the services of an employee summarily, if an adverse report was received pursuant to verification of antecedents, the impugned order dated 13-11-1996 is not based solely on the adverse report received on verification of the petitioner's character and antecedents. The order of termination is also based on the ground that "the petitioner had absented himself from duty", which is alleged to be against the rules and regulations of the Corporation. For the alleged acts of misconduct of absenting himself unauthorizedly from duty, the petitioner was undoubtedly required to be put on notice and disciplinary action is to be initiated in accordance with the regulations governing employees of the respondent corporation. The impugned order of termination is in violation of principles of natural justice and is hereby set aside.

The writ petition is accordingly allowed. It is, however, made clear that this order shall not preclude the respondent Corporation from taking disciplinary action against the petitioner under the applicable rules and regulations. No order as to costs.

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RAMESH RANGANATHAN, J

Dated: 12-09-2005

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